WONG HONG TOY & ANOR.

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
LP THEAN J
[CRIMINAL MOTION NO. 26 OF 1985]
22 AUGUST 1985

CRIMINAL LAW AND PROCEDURE: *Application for cases pending in Subordinate Court be transferred to High Court under s. 184 of Criminal Procedure Code - Application made on ground that no fair trail would be given before Subordinate Court - Questions of law of unusual difficulties involved - Whether application should be allowed.*

This was an application by the applicants (Wong Hong Toy and Joshua Benjamin Jeyaretnam) for an order that their two cases which were pending in the Subordinate Court be transferred to the High Court pursuant to s. 184 of the Criminal Procedure Code. The applicants were charged under s. 199 of the Penal Code read with s. 193 for jointly making a false declaration in respect of their Party's accounts. The applicants were first tried by the learned Senior District Judge who acquitted and discharged them on the ground that the declaration was not one which a Court was bound or authorised by law to receive as evidence of any fact. The prosecution appealed.

The High Court allowed the appeal holding that it was a declaration which the Court was authorised by the Rules of the Supreme Court to receive as evidence in the receivership proceedings and was therefore a declaration within the meaning of s. 199 of the Penal Code. A fresh joint trial was ordered.

The applicants argued that they would not have a fair trial as the Subordinate Court would be bound by the ruling of the High Court that the declaration was one within the meaning of s. 199 of the Penal Code, a point which the applicants intended to raise - unlike another trial before the High Court as the High Court would not be bound by the said ruling.

It was further argued that the cases involved some questions of law of unusual difficulties and hence the cases should be transferred to the High Court.

It was finally argued that they, i.e. the applicants, were Chairman and Secretary General of a political party in opposition to the party in power and for the ends of justice they should be tried in the High Court.

Held:

[1] The first argument could not be sustained as the applicants could not re-open and raise the same issue again in the Subordinate Court.

[2] Further if the application for the transfer was purely with a view to raising the same issue again it would tantamount to an abuse of the process of the Court as the issue had been decided upon.

[3] No question of law of unusual difficulty could be discerned.

[4] The fact that the applicants held such positions in a political party was irrelevant.

[Application dismissed.]

Legislation referred to:
Criminal Procedure Code, s. 184
Penal Code (Cap 103) [Sing], ss. 193, 199
Rules of the Supreme Court [Sing], O. 30, O. 41, r. 5(2)
Statutory Declarations Act [UK], 1835
Statutory Declarations Act (Cap. 13) [Sing], s. 2

In person and for the 1st applicant - J.B. Jeyaretnam
For the public prosecutor: Tan Teow Yeow

JUDGMENT

LP Thean J:

This is an application for an order that the two cases, DAC 4151 and 4152 of 1983, presently pending in the Subordinate Court be transferred to the High Court pursuant to s. 184 of the Criminal Procedure Code. In the two cases the applicants are respectively charged for having committed an offence under s. 199 read with s. 193 of the Penal Code (Cap. 103). In each case the charge is as follows:

> You, ..., are charged that you on or about 3 August 1982 at Singapore made a false statement in a declaration which was by law receivable as evidence before Daljit Singh a Commissioner for Oaths when they stated that
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> (a) Receipts and Payment Account for the period 1st January 1982 to 16 June 1982,
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> (b) Income and Expenditure Account for the period 1st January 1982 to 16 June 1982,
>
> (c) Balance Sheet as at 16 June 1982
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> drawn up by A. Balakrishnan, the Treasurer of the Workers' Party and affirmed by him in an affidavit dated 6th July 1982, exhibited a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified;"
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> which you did not believe to be true touching a point material to the object for which the declaration was made namely the verification of the Accounts of the Workers' Party and had thereby committed an offence punishable under s. 199 read with s. 193 of the Penal Code (Chapter 103).
>
> (Particulars).

The applicants were first tried on the said charges before the learned Senior District Judge and at the conclusion of the prosecution's case were acquitted and discharged. The learned District Judge ruled that the declaration jointly made by them on 3 August 1982 was not a declaration which a Court of justice was bound or authorised by law to receive as evidence of any fact because it did not contain the following statutory wording: "and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835", which is found in the Schedule to the Statutory Declarations Act (Cap. 13). Against that decision the Public Prosecutor appealed, and the appeal was heard before the learned Chief Justice. He held that the declaration was not made in the form prescribed in the Schedule to the Statutory Declarations Act and therefore was not a statutory declaration under the Statutory Declarations Act, 1835 of United Kingdom (which is deemed by s. 2 of the Singapore Statutory Declarations Act to be in force in Singapore), but nevertheless was a declaration within the meaning of s. 199 of the Penal Code, and his ground for so holding is this. On 1 June 1982, the High Court, upon an application by way of execution proceedings made by one Tay Boon Too to recover his costs awarded to him some years ago, by an order appointed the Official Receiver as the

receiver to receive the assets of the Workers' Party. Under O. 30 of the Rules of the Supreme Court, a receiver so appointed by Court is required to submit accounts to the Court and each account submitted must be accompanied by an affidavit verifying it, and under O. 41 r. 5(2) an affidavit sworn for the purpose of interlocutory proceedings may contain statements of information or belief with sources and grounds thereof. Accordingly, in compliance with O. 30, the receiver submitted his accounts to the Court for the purpose of passing them verified by his affidavit to which was annexed the declaration jointly made by the applicants as permitted under O. 41 r. 5(2). As the declaration formed part of the receiver's affidavit, it was a declaration which the Court was authorised by the Rules of the Supreme Court to receive as evidence in the receivership proceedings and was therefore a declaration within the meaning of s. 199 of the Penal Code. The learned Chief Justice allowed the appeal by the Public Prosecutor and ordered a fresh joint trial of the applicants before another District Judge.

The first ground advanced on behalf of the applicants in support of the application is that it is not open to them to plead before the Subordinate Court that the declaration was not a declaration within the meaning of s. 199 of the Penal Code inasmuch as the Subordinate Court would be bound by this ruling made by the learned Chief Justice. The High Court, however, would not be so bound and would be in position to entertain a challenge to this ruling. In view of this, the applicants, so they contended, would not have a fair trial before the Subordinate Court.

In my opinion this ground clearly cannot be sustained. First, plainly the applicants cannot raise the same issue again in the Subordinate Court. It had been raised and argued before the Subordinate Court which gave its decision thereon. It then went on appeal to the High Court and was further argued before the learned Chief Justice; he held that the Subordinate Court erred in law and he ruled that the declaration was a declaration within the meaning of s. 199 of the Penal Code. The issue, in so far as the two cases, DAC 4151 and 4152 of 1983, are concerned, had been fully argued and had been decided upon, and such a decision is binding on the applicants; surely the applicants cannot re-open this issue. To say that because of this ruling the applicants would not have a fair trial in the Subordinate Court is an argument totally untenable and is a misconceived argument. Secondly, in seeking to transfer the two cases to the High Court with a view to raising the same issue again, which had been decided upon after full argument, is in my view tantamount to an abuse of Court process.

Next, it was argued on behalf of the applicants that the two cases would involve some questions of law of unusual difficulties and on that ground they should be transferred to the High Court. This ground has not been made out to my satisfaction. I am unable to discern any question of law of unusual difficulty which is likely to arise in these cases. Initially, the question, namely, whether the document signed by them jointly was a declaration within the meaning of s. 199 of the Penal Code might have posed some difficulty, but that has now been resolved by the decision of the learned Chief Justice.

Lastly, the applicants relied on the fact that they are Chairman and Secretary General respectively of a political party in opposition to the party in power and it is expedient for the ends of justice that they should be tried in the High Court. The fact that they hold such positions in a political party is irrelevant, and again it has not been made out to my satisfaction that an order for transfer ought to be made on that ground.

Also found at [1985] 2 CLJ 499